

DRAFT Memorandum of Understanding Related to the Occidental County Sanitation District to Graton Community Service District Wastewater Transfer Pipeline Project

This Memorandum of Understanding (“MOU”) is between **Occidental County Sanitation District** (“Occidental”), a local district, and **Graton Community Services District**, a special district of the State of California (“Graton”). The Effective Date of this MOU is the date the MOU is last signed by the parties to the MOU, unless otherwise specified in Paragraph 5.1. Occidental and Graton are sometimes individually referred to as a “Party” and collectively as “Parties.”

RECITALS

- A. Occidental has been actively working toward solving its wastewater challenges since the 1990s.
- B. Graton operates a small wastewater system that includes a wastewater treatment plant that produces tertiary treated recycled water.
- C. Occidental has been challenged to provide affordable wastewater services to its small customer base (100 customers) and the current rates create a significant burden, in particular, on the businesses Occidental serves.
- D. Occidental operates at a deficit each year and receives large subsidies from Sonoma County Water Agency’s (Sonoma Water) General Fund to cover its operating and capital improvement costs.
- E. Wastewater is currently being hauled from Occidental’s lift station to the Airport/Larkfield/Wikiup Sanitation Zone treatment plant for treatment and disposal.
- F. Graton approached Sonoma Water several years ago to express their interest in providing wastewater treatment and disposal services to Occidental. Based on preliminary assessments, there is the potential for both Graton and Occidental to realize significant benefits by connecting these systems together.
- G. Occidental has completed a feasibility study to better understand the costs and benefits of connecting the two systems which indicated there would be financial benefits to both Occidental and Graton from construction of a pipeline from Occidental to Graton to transfer wastewater.
- H. Under this MOU, Occidental will be responsible for design, environmental compliance, and construction of the wastewater transfer pipeline (Pipeline Project) and will own the transfer pipeline.
- I. Occidental does not have the financial capacity to finance Pipeline Project implementation and is seeking grant funding to fund Pipeline Project design and construction.
- J. Graton ratepayers will not be responsible for funding the design and construction of the Pipeline Project.

- K. Upon approval of the Pipeline Project and of the Pipeline Project's California Environmental Quality Act (CEQA) compliance document, Graton will execute an agreement to provide wastewater treatment services to Occidental (Wastewater Treatment Services Agreement).

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. RECITALS

- 1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

- 2.1. The following exhibits are attached hereto and incorporated herein:
- a. Exhibit A: Sample Wastewater Treatment Services Agreement.
 - b. Exhibit B: Insurance Requirements.

3. GRATON'S RESPONSIBILITIES

- 3.1. *Pipeline Project:* Graton shall provide Occidental with necessary right of way related to Graton property, temporary discharge permits, and other documents as needed to complete the Pipeline Project.
- 3.2. *Operation, Maintenance and Administrative Services:* If the Pipeline Project and the Pipeline Project's CEQA compliance document are approved, the Parties shall execute the Wastewater Treatment Services Agreement within 30 calendar days of Pipeline Project approval by both Occidental's and Graton's Board of Directors in substantially the same form as shown in as Exhibit A (Sample Wastewater Treatment Services Agreement) The term of the Wastewater Treatment Services Agreement shall commence 60 calendar days following Occidental's filing of the Notice of Completion of the Pipeline Project.
- 3.3. *Meetings:* Attend meetings as requested by Occidental to review draft and final documents and reports.
- 3.4. *Communication:* Provide regular communication monthly via email or phone with Occidental on budget tracking and other issues as required.
- 3.5. *Access:* Provide access to work sites, records, programs, or procedures in support of the Pipeline Project by Occidental or Occidental's consultant.
- 3.6. *Cooperation with Occidental:* Cooperate with Occidental in support of the Pipeline Project hereunder. Graton shall coordinate the work with Occidental's Project Manager. Contact information and mailing addresses:

Occidental	Graton
Project Manager: Michael Thompson 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: 707-521-1863 Email: michael.thompson@scwa.ca.gov	Contact: Chad Davisson P.O. Box 534 Graton, CA 95444 Office: 707-823-1542 Mobile: 707-330-3542 Email: chaddavisson.gcsd@gmail.com

4. OCcidental'S RESPONSIBILITIES

- 4.1. *Funding:* Occidental will provide funding (self-fund or seek grants) for the design and preparation of construction contract documents for the Pipeline Project.
- 4.2. *Administration:*
 - a. *Administration of Design Agreement:*
 - i. Occidental shall conduct a competitive selection process to select a consultant to design the Pipeline Project. Occidental shall provide Graton the opportunity to review proposals received in the competitive selection process.
 - ii. Occidental shall review the scope of work and draft agreement with Graton prior to agreement execution.
 - iii. Occidental shall review design consultant's work products with Graton. Decisions between Occidental and Graton shall be made by consensus, with each party making best efforts to reach consensus with the understanding that the Pipeline Project design must be completed in an expeditious manner.
 - iv. Occidental shall be the Lead Agency for the Pipeline Project under the requirements of the California Environmental Quality Act (CEQA) and shall prepare all appropriate environmental documents.
 - b. *Administration of Construction Contract:*
 - i. Occidental shall award, execute in its own name, and administer such contracts as required to construct the Pipeline Project.
- 4.3. *Access:* Provide access to work sites, records, programs, or procedures in support of the Pipeline Project by Graton's staff or representatives.
- 4.4. *Operations:* Conduct work in a manner as to not disrupt Graton's operations or give rise to any injuries or property damage.
- 4.5. *Occidental Liability:* Occidental is a separate legal entity from Sonoma Water, operated under contract by Sonoma Water. Graton agrees that it shall make no claim for compensation for Graton's services against Sonoma Water funds and expressly waives any right to be compensated from other funds available to Sonoma Water.

- 4.6. *Method of Payment:* Occidental agrees to finance 100% of the Pipeline Project. Occidental's costs for the Pipeline Project shall be all costs including salary, benefits, overhead, county counsel expenses, and consultant and contractor costs.

5. TERM OF AGREEMENT AND COMMENCEMENT OF WORK

5.1. *Term of MOU:*

- a. This MOU shall expire on December 31, 2028, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
- b. Occidental shall have two options to extend this MOU for a period of one year each by providing written notice to Graton thirty days in advance of the expiration date noted in this Article and of the first extension option.

- 5.2. *Commencement of Work:* Occidental will proceed immediately with the performance of this MOU upon the Effective Date of this MOU.

6. TERMINATION

- 6.1. Each Party may terminate its participation in this MOU by giving ninety (90) calendar days advance written notice to the other Party of its intent to terminate its participation in this MOU. In the event of termination by Graton, Graton will be responsible for Occidental's costs and any expenses incurred by Occidental at the date of termination for the Pipeline Project. Occidental's right to terminate may be exercised by Sonoma Water's General Manager.

7. MUTUAL INDEMNIFICATION

- 7.1. Each party to this MOU (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's officials, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party's breach of any material term of this MOU, or Indemnifying Party's negligence or willful misconduct in connection with the performance of this MOU, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from Indemnified Party's breach of any material term of this MOU, or Indemnified Party's negligence or willful misconduct in connection with the performance of this MOU. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the parties hereto or their agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8. **INSURANCE**

- 8.1. With respect to performance of work under this MOU, each Party shall maintain and shall require all of its contractors, subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B (Insurance Requirements).

9. **MISCELLANEOUS PROVISIONS**

- 9.1. *Construction:* To the fullest extent allowed by law, the provisions of this MOU shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Graton and Occidental acknowledge that they have each contributed to the making of this MOU and that, in the event of a dispute over the interpretation of this MOU, the language of the MOU will not be construed against one party in favor of the other. Graton and Occidental acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this MOU.
- 9.2. *Consent:* Wherever in this MOU the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed. No Party shall have the authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent to bind the other Party to any obligation whatsoever, except as the other Party may specify in writing.
- 9.3. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Mutual Indemnification), nothing contained in this MOU shall be construed to create and the parties do not intend to create any rights in third parties.
- 9.4. *Applicable Law and Forum:* This MOU shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this MOU or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 9.5. *Captions:* The captions in this MOU are solely for convenience of reference. They are not a part of this MOU and shall have no effect on its construction or interpretation.
- 9.6. *Merger:* This writing is intended both as the final expression of the MOU between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the MOU, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this MOU, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this MOU. No modification of this MOU shall

be effective unless and until such modification is evidenced by a writing signed by both parties.

- 9.7. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this MOU will survive its completion or termination for any reason.
- 9.8. *Time of Essence:* Time is and shall be of the essence of this MOU and every provision hereof.
- 9.9. *Counterpart; Electronic Signatures:* The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF), or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal E-SIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

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IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date last signed by the parties to the MOU.

Reviewed as to funds:

TW 21/22-032

By: _____
Sonoma County Water Agency
Division Manager - Administrative Services

Approved as to form:

By: _____
Adam Brand, Deputy County Counsel

Insurance Documentation is on file with
Occidental

Date/TW Initials: _____

Occidental County Sanitation District

Graton Community Services District, a special district of the State of California

By: _____
Grant Davis
General Manager
Authorized per Sonoma County Water Agency's Board of Directors Action on **TBD**

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

Exhibit A

Sample Wastewater Treatment Services Agreement

[To be included in the final MOU]

Exhibit B

Insurance Requirements

With respect to performance of work under this MOU, each Party shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this MOU.

Each Party reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this MOU or failure to identify any insurance deficiency shall not relieve each Party from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this MOU.

1. **INSURANCE**

1.1. Workers Compensation and Employers Liability Insurance

- a. Required if the Party has employees as defined by the Labor Code of the State of California.
- b. If a Party currently has no employees as defined by the Labor Code of the State of California, said Party agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this MOU or any extensions of the term.

1.2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If a Party maintains higher limits than the specified minimum limits, the other Party requires and shall be entitled to coverage for the higher limits maintained by the Party first mentioned.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by the other Party. Each Party is responsible for any deductible or self-insured retention of their own and shall fund it upon the other Party's written request, regardless of whether the other Party has a claim against the insurance or is named as a party in any action involving that Party.
- d. Sonoma County Water Agency, Occidental County Sanitation District, their officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Graton Community Services

District in the performance of this MOU. Graton Community Services District, their officials, agents, and employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Occidental County Sanitation District in the performance of this MOU.

- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between each Party's additional insureds and the Party and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance to be furnished to the other Party: Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If a Party currently owns no autos, that Party agrees to obtain such insurance should any autos be acquired during the term of this MOU or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance to be furnished to the other Party: Certificate of Insurance.

1.4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate. Option for attorneys: Minimum Limit: \$1,500,000 per claim or per occurrence; \$1,500,000 annual aggregate.
- b. Any deductible or self-insured retention of a Party shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by the other Party.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this MOU shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this MOU.

- e. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.
- 1.5. Standards for Insurance Companies
- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.
- 1.6. Documentation
- a. The Certificate of Insurance must include the following reference:
TW 21/22-032.
 - b. All required Evidence of Insurance shall be submitted prior to the execution of this MOU. Graton agrees to maintain current Evidence of Insurance on file with Occidental for the entire term of this MOU and any additional periods if specified in Sections 1.1, 1.2, 1.3, or 1.4, or above.
 - c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Occidental County Sanitation District, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.
 - d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
 - e. Each Party shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
 - f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.
- 1.7. Policy Obligations
- a. Each Party's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 1.8. Material Breach
- a. If one Party fails to maintain insurance which is required pursuant to this MOU, it shall be deemed a material breach of this MOU. The other Party, at its sole option, after providing a 30-day written notice, may terminate this MOU and obtain damages from the breaching Party resulting from said breach. Alternatively, the non-breaching Party may purchase the required insurance, and without further notice to the breaching Party, may deduct from sums due to the breaching Party any premium costs advanced by the non-breaching Party for such insurance. These remedies shall be in addition to any other remedies available to the non-breaching Party.